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ATTORNEYS FOR DEFENDANTS

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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JOSHUA CHATWIN,

Plaintiff,

v.

DRAPER CITY; DRAPER CITY POLICE  
DEPARTMENT; POLICE CHIEF MAC  
CONNOLLE; OFFICER J. PATTERSON, in his  
individual and official capacity; OFFICER  
DAVID HARRIS, in his individual and official  
capacity; OFFICER HEATHER BAUGH, in  
her individual and official capacity; and JOHN  
DOES 1-10,

Defendants.

**MOTION TO STRIKE LATE-FILED  
AMENDED COMPLAINT**

(Oral Argument Requested)

Civil No. 2:14-cv-00375  
Judge Dale A. Kimball

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Defendants Draper City, Draper City Police Department, Police Chief Mac Connole,  
Officer J. Patterson, Officer David Harris, and Officer Heather Baugh (collectively  
“Defendants”), hereby move to strike Plaintiff’s Amended Complaint [Doc. 12]. This Motion is  
supported by the following memorandum of points and authorities.

## **BACKGROUND**

Plaintiff moved to amend his complaint on January 15, 2015.<sup>1</sup> Defendants filed a notice of non-opposition to the motion on February 2, 2015.<sup>2</sup> This Court granted Plaintiff's Motion to Amend on February 3, 2015 and ordered that Plaintiff file the Amended Complaint within 7 days of that date.<sup>3</sup> Plaintiff filed its Amended Complaint on March 6, 2015, thirty-one days after the Court's Order.<sup>4</sup> Counsel for Plaintiff emailed counsel for Defendants on the day the amended complaint was filed and stated that she did not see the Court's Order and therefore missed the deadline.<sup>5</sup>

## **ARGUMENT**

### **I. PLAINTIFF'S LATE-FILED AMENDED COMPLAINT SHOULD BE STRIKEN.**

Utah Local Rule 15-1 requires that "[a] party who has been granted leave to file must subsequently file the amended complaint with the court." Here, the Court set a deadline for Plaintiff to file its amended complaint 7 days after its order, or February 10, 2015.<sup>6</sup> Plaintiff failed to comply with the Court's order. In similar cases where a Plaintiff is directed to file its Amended Complaint by a certain date, Utah District Courts take adverse action against the Plaintiff when it fails to meet that deadline. *See, e.g. Hussell v. Federal Government*, 2012 WL 5523151, \*2 (D. Utah October 24, 2012).

Furthermore, a District Court has discretion to deny a motion for late filing of an amended complaint when it has considered "the adequacy of the reasons Plaintiff provided for

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<sup>1</sup> Doc. 9.

<sup>2</sup> Doc. 10.

<sup>3</sup> Doc. 11.

<sup>4</sup> Doc. 12.

<sup>5</sup> See email from Lisa Marcy, attached hereto as Exhibit A.

<sup>6</sup> Doc. 11.

the delay.” *Cohen v. Longshore*, 621 F.3d 1311, 1314 (10th Cir. 2010). Plaintiff’s counsel explained that she did not see the Court’s Order in her email, nor did anyone in her office. *See* Emails, Exhibit A. Plaintiff’s counsel receives copies of all Court filings to six separate email addresses, at least two of which go to a separate law firm. Failing to notice six emails with a Court’s Order granting their client’s motion for nearly a month is not an adequate reason for Plaintiff’s delay. Therefore this Court should strike Plaintiff’s Amended Complaint for failure to comply with the Court’s Order.

### **CONCLUSION**

Plaintiff failed to file its Amended Complaint by the deadline set by this Court and has not shown an adequate reason for its delay, therefore this Court should strike the amended pleading.

DATED this 12th day of March, 2015.

**DURHAM JONES & PINEGAR, P.C.**

/s/ R. Blake Hamilton

R. Blake Hamilton

Ashley M. Gregson

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the **MOTION TO STRIKE LATE-FILED AMENDED COMPLAINT** was served this 12<sup>th</sup> day of March, 2015, via CM/ECF electronic filing upon the following:

Lisa A. Marcy  
AARON & GIANNA, PLC  
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Salt Lake City, UT 84106

John K. Johnson  
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/s/ Carrie Watters